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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

CRIMINAL APPEAL NO. 185 /2000.
(APPEAL UNDER SECTION 374(2) OF THE CRIMINAL PROCEDURE CODE, 1973.)

APPELLANTS: (In jail)

1. Resham Singh alias Moriram, S/o Dhanaram Binjhiya aged about 65 years,

2. Yuvraj Singh alias Resham Singh Binjhiya, aged about 17 years,

Both R/o Dharsiwa Police Station-Bilaigarh, District, Raipur (MP).

//versus//

RESPONDENT: STATE OF MADHYA PRADESH Through- Police Station- Bilaigarh, Distt. Raipur (MP).

1997

Shri Pandey Adv.

Advocate

A. R.

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

6-12-2005

Mr. Abhay Tiwari, Advocate for the appellants.

Mr. G.K. Beriwal, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Miss Sharmila Singhai, Advocate with Miss Samta Jain, Advocate for the complainant.

Oral judgment.

This appeal has been directed against the judgment of conviction and sentence dated 6-9-2000 passed by the 1st Additional Sessions Judge, Baloda Bazaar, in Sessions Trial No.500/97, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for the commission of offence under Section 302 of the I.P.C. for committing the murder of Ghasiya, sentenced each of the accused to undergo imprisonment for life and pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month.

The case of the prosecution, in brief, is that in the night of 7-8-97 at about 12 mid night when Ramshila Bai was sleeping in her house and her husband went to watch video film, she heard the low of her male buffalo, she woke up and saw that the horn of the male buffalo of accused/appellant No.1 Resham Singh @ Moriram was stuck in the iron chain of their male buffalo, on which she called her husband Ghasiya who came along with Sukhdev and they separated both the male buffalos. On this accused/ appellant No.1 Resham Singh @ Moriram also came. Ghasiya asked Moriram that why are

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you not tying your male buffalo properly. On this, Moriram started assaulting Ghasiya with lathi, which he was carrying with him and in turn, Ghasiya also assaulted him. On this, the son of Moriram namely, Yuvraj Singh, accused/ appellant No.2 herein, started assaulting Ghasiya with lathi as a result of which Ghasiya fell down and the accused persons left Ghasiya there, upon which the villagers came and found that Ghasiya had died. Ramshila lodged the report at Police Station: Bilaigarh, where the Station House Officer registered the case under Ex.P-9 and left for the scene of occurrence. After giving notice Ex.P-1 to the Panchas, he prepared the Panchnama of the body of Ghasiya Ex.P-2. The body of Ghasiya was sent for post-mortem to the Primary Health Centre, Bilaigarh Ex.P-7A. He prepared the site plan under Ex.P-15. Yuvraj Singh gave memorandum on 8-8-97 Ex.P-10 and in pursuance of that, he got recovered the weapon of offence, club, under Ex.P-11. On 8-8-97 accused Resham Singh also gave a memorandum Ex.P-12 and in pursuance of that he also got recovered the weapon of offence, club, under Ex.P-13. The iron chain meant for tying the male buffalos was taken into possession under Ex.P-14. Dr. Chandra Shekhar Patel (PW-6) conducted post-mortem on the body of Ghasiya and prepared the post-mortem report Ex.P-7.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazaar, who in turn committed the case to the Sessions Judge, Raipur, from where, learned 1st Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the offence against the accused/ appellants examined 14 witnesses. On the other hand, learned Additional Sessions Judge recorded the statement of accused persons under Section

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313 of the Cr.P.C., they denied the prosecution evidence appearing against them and said that they have been implicated in a false case, Ghasiya died on account of crush injuries received on account of crushing by the buffalo. One defence witness namely Barat Ram was examined.

Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced both the accused persons under Section 302 of the I.P.C. as mentioned in the earlier part of this judgment.

We have heard Mr. Abhay Tiwari, learned counsel for the accused/ appellants, Mr. G.K. Beriwal, learned Additional Public Prosecutor with Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent and Miss Sharmila Singhai, Advocate with Miss Samta Jain, learned counsel for the complainant.

Learned counsel for the accused/appellants did not dispute the death of Ghasiya as homicidal in nature. From the evidence of eyewitnesses namely, Bharatlal (PW-1), Ram Kumar (PW-2), Sukhdev (PW-8) & Ramshila (PW-9) and the medical evidence of Dr. Chandra Shekhar Patel (PW-6) to the effect that he examined Ghasiya's dead body and found that there were six injuries, viz., abrasions, swelling, bruises and swelling on right side scapular region and on the left hand, further that on opening the body, he found that the skull bone of the deceased was fractured which was grievous in nature and died on account of shock as a result of the head injury, whose post-mortem report is Ex.P-7, it is established that the death of Ghasiya was homicidal in nature.

Now, coming to the involvement of the accused/appellants in committing the murder of Ghasiya, Sukhdev (PW-8) has stated that in the

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fateful night he along with Ghasiya went to watch video in the village, at about 12 mid night they heard the cries of Ramshila, the wife of Ghasiya, she was saying that their male buffalo has stuck, on hearing the cries they left for the residence and saw that the male buffalo was stuck in the iron chain, some how they managed to cut the rope, and separated the male buffalos of Ghasiya & Resham Singh on which Resham Singh came. When Resham Singh was taking out his buffalo, Ghasiya assaulted Resham with wooden club three times and in that process, Resham & Ghasiya grappled, first Ghasiya assaulted thrice with the club. Ramshila (PW-9) has also corroborated the above evidence, but she has stated that accused Yuvraj Singh assaulted her husband on the head with wooden club repeatedly, Resham Singh also assaulted her husband with club and they left, upon which she raised cries and villagers came, however her husband died, therefore, she lodged the report. The above evidence has also been corroborated by Bharatlal (PW-1) & Ram Kumar (PW-2).

From the evidence of above witnesses it is established that the male buffalo of Ghasiya was stuck in the iron chain, Ramshila raised voice for help on which her husband Ghasiya along with Sukhdev came and they separated the male buffalo of Ghasiya as well as of Resham Singh, accused/appellant No.1, in that process in the first instance, Ghasiya assaulted Resham Singh with the wooden club upon which Resham Singh raised cries and the son of Resham Singh, co-accused Yuvraj Singh, came with wooden club and assaulted Ghasiya on his head as a result of which he fell down and received fracture injury in the head and died on the spot. Therefore, it is established that the death of Ghasiya was caused on account of the assault made by Yuvraj Singh & Resham Singh.

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Learned counsel for the accused/appellants argued that in the first instance, when Ghasiya assaulted Resham Singh, in order to protect Resham Singh, Yuvraj Singh came and assaulted Ghasiya without any intention to commit his murder and in the right of private defence Yuvraj Singh assaulted Ghasiya. Therefore, in any case, it is a case of exceeding the right of private defence and does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor for the State/ respondent and learned counsel for the complainant supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the parties, if we scan the evidence which has been mentioned earlier, the male buffalos of Ghasiya and accused Resham Singh were tied in one room, some how, the male buffalo of Ghasiya was stuck in the iron chain with which the male buffalo of Resham Singh was tied and the male buffalo of Ghasiya started lowing on which Ramshila called her husband, her husband Ghasiya & Sukhdev came and separated the male buffalo, and Ghasiya became angry. When Resham Singh came and was taking back his male buffalo, Ghasiya assaulted Resham Singh with wooden club on which Yuvraj Singh, the son of Resham Singh, came and both of them (Resham Singh & Yuvraj Singh) assaulted Ghasiya with the wooden club as a result of which the deceased received fatal injury and died on the spot.

In the above facts, it cannot be said that the accused/appellants assaulted Ghasiya with the intention to cause his death, that too after pre-plan or pre-meditation. This is a case of exceeding the right of private defence. When Ghasiya assaulted Resham Singh with wooden club in a

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heat of passion, all of a sudden, in order to protect Resham Singh, Yuvraj Singh came with wooden club and assaulted Ghasiya with the same, which proved fatal, and Ghasiya died. Therefore, the offence against the accused/ appellants does not travel beyond Section 304 Part-II of the I.P.C. In the circumstances, the conviction and sentence awarded by learned Additional Sessions Judge under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal is partly allowed. The conviction and sentence under Section 302 of the I.P.C. are set aside, instead thereof, the accused/appellants are held guilty for the commission of offence under Section 304 Part-II of the I.P.C. and each of them are sentenced to undergo imprisonment for six years. Detention period of the accused/appellants during investigation, trial and pendency of the appeal shall be set-off against the above sentence.

Sd/-
V.K.Shrivastava
Judge

Sd/-
L.C.BHADOO
Judge